

**MINUTES OF THE REGULAR MEETING OF THE
IDAHO STATE BOARD OF CHIROPRACTIC PHYSICIANS**

**BOISE, IDAHO
April 22, 1999**

The Idaho Board of Chiropractic Physicians met at the Bureau of Occupational Licenses, 1109 Main Street, Ste. 220, Boise, Idaho, on April 22, 1999. The meeting was called to order by Dr. Moldenhauer at 9:10 a.m. with the following Board members present:

Dr. Glenn Moldenhauer, Chair
Dr. Eric Boughton, Vice-Chair
Ms. Sandra Averill, Secretary
Dr. James Hollingsworth, Member
Dr. Henry G. West, Member

Also in attendance were:

Carmen Westberg, Bureau Chief
Budd Hetrick, Deputy Bureau Chief
John Kersey, Supervising Investigator
Roger Hales, Administrative Attorney
Kirsten Wallace, Deputy Attorney General

Minutes

Motion by Dr. Hollingsworth seconded by Dr. West, to accept the minutes as drafted of the December 11, 1998, January 12, 1999, Board meetings; and to accept the minutes as drafted of the November 24, 1998, January 26, 1999, February 10, 1999, February 16, 1999, February 24, 1999, March 5, 1999, March 9, 1999, March 17, 1999, conference calls; and, all carried.

FCLB Conference – Philadelphia

Dr. Moldenhauer discussed his recent attendance at the Federation of Chiropractic Licensing Boards Conference in Philadelphia. The importance of continuing education was discussed as a necessity to the profession, both for training and gaining credibility. Dr. Moldenhauer has been selected to serve on the Long Range Planning Committee, which was established to standards for continuing education, thereby providing guidance to states in establishing their standards. The internet as an education tool is of particular interest as it would enable doctors in rural areas to have access to the programs which would meet certain criteria. Certification for participating such programs would be acquired by paying a fee and testing at the end of the program; a program of which would not allow completion until the correct answer is provided. The Committee will seek acceptance from the states of these programs and methods.

The conference addressed the fact that the CCE has no jurisdiction over continuing education, that it is concerned only with the doctor's chiropractic education. Dr. Moldenhauer advised that continuing education courses being sponsored by CCE approved colleges are not regulated as to content. A case in point would be the Board's recent monitoring of the seminar of Dr. Koren.

Drs. Moldenhauer and Hollingsworth expressed disappointment in the above-mentioned seminar due to the minimal educational content of value to chiropractors.

Another conference topic was the Healthcare Institute Protection database (HIP). Dr. Moldenhauer said the database would be mandated by the federal government and financed by the states. HIP would contain criminal and civil actions taken against healthcare providers. The FCLB is seeking member boards interested in participating in a lawsuit against the program. CIN-BAD can provide much of the information and the FCLB somewhat leads the industry. Dr. Moldenhauer noted there is concern with violation of the Patient Information and Privacy Act, as cases would be entered prior to a formal ruling. Mr. Hales stated he does not believe a disciplinary matter could be reported prior to final disposition as it would violate due process. Dr. Moldenhauer said this is only a part of the FCLB's objection to the program. Ohio appears to be a state that may become involved and Dr. Moldenhauer stated he would assist and begin by contacting the Idaho Office of the Attorney General.

Financial Report

Ms. Westberg presented the Financial Report to the Board indicating year-to-date expenditures of \$52,000. It was noted that a significant expense was due to the hearing; and approximately \$10,000 more used for travel than what was budgeted. Ms. Westberg advised appropriations are tight this year. Ms. Westberg advised that the Bureau will send forms for budget projections and the mailing will include a report of last year's and next year's budget. Dr. West asked how the Board can project for such unexpected things as hearings. Ms. Westberg advised that the Bureau has a \$50,000 appropriation for such unexpected events. She stated that it is a floating fund to be used by whichever board may experience such expenses, noting there could be a problem if two or three boards were to experience hearings. She anticipates pursuing a larger appropriation, but more research is necessary.

Acupuncturists

Ms. Westberg discussed a meeting with the acupuncturists and noted the possibility of the new board contracting for services with the Bureau.

Bureau/Board Contract

Ms. Westberg advised the Board that Terry Coffin, Deputy Attorney General for the Administrative Division of the Office of the Attorney General, is still working on his rewriting of the board contracts. Ms. Westberg asked that the board consider empowering the Board Chair to review and execute the contract as soon as it is ready. Ms. Averill stated that, although she has no problem with the Chair approving the contract, each member should first receive a copy. Ms. Westberg agreed to forward copies to the Board as soon as its contract is complete.

Revised Forms

Mr. Hetrick introduced revised Board forms for Application for Licensure, Certificate of Moral Character, Professional Experience Reference, Application for Temporary Permit and Renewal. The Board briefly reviewed the forms and all expressed their appreciation of Mr. Hetrick's accomplishments.

Dr. Hollingsworth asked that the second page of the Temporary Permit have no reference to D.C., Dr., etc.

Dr. Hollingsworth moved to accept the new forms with suggested revisions to the Temporary Permit and Dr. West seconded, all carried.

Mr. Hales suggested the addition to item no. 16 of a reference to "moral turpitude" on the Application for Licensure.

Dr. Hollingsworth moved to amend the previous motion to accept forms to include Mr. Hales' suggestion regarding the Application for Licensure. Dr. West seconded and all carried.

Kirsten Wallace advised the Application for Licensure should also include a statement with regard to convictions, also to include "found guilty or received a withheld judgment or suspended sentence." Mr. Hetrick agreed and advised he will insert the citation.

Dr. Hollingsworth moved to amend the original motion to also include Ms. Wallace's suggested revision to no. 16 of the Application for Licensure. Dr. West seconded and all carried to accept the original motion with the two suggested amendments.

Investigative Report

Mr. Kersey provided the all present with a copy of the Investigative Report.

Dr. Hollingsworth moved to enter executive session for the purpose of discussing potential disciplinary matters, Dr. West seconded and all carried.

Dr. West moved to exit executive session, Ms. Averill seconded and all carried.

Dr. West moved to contribute names and establish a list of experts for use by the investigative board for consultation and use as expert witnesses in investigative case review. In discussion on this motion, Ms. Averill asked clarification of use of these professionals and whether they were paid for their services, to which Ms. Westberg advised they are not paid for file review and when a matter is litigated it is usually the prosecutor who negotiates a fee for expert witness services, that fee then being approved by Ms. Westberg according to budget constraints. Dr. Moldenhauer asked whether there was potential conflict if a professional were used as an expert witness who would also perform peer review, to which Mr. Hales advised he sees no problem with that. Based on the discussion Ms. Averill seconded and all carried Dr. West's original motion.

Peer Review

Discussion was held regarding election of Peer Review Committee members. Dr. Hollingsworth submitted that individuals should possess understanding both of chiropractic procedures and laws surrounding the practice of chiropractic. He stated that ex-Board members would make good candidates. Ms. Westberg noted it would be important to have individuals who would stand by their decisions. Ms. Wallace elaborated that the members must also be decisive, able to interpret records and discuss procedures and opinions with her as prosecutor. Dr. Boughton stated the Board should develop criteria and standards by which the state could implement the selection process of committee members. He suggested standards such as experience and knowledge of the law. Dr. West stated the investigator is trained in the law and that committee members should possess qualities of professionalism, ethics, credibility, and that post-graduate training would also be helpful. Dr. Hollingsworth stated the investigator and prosecutor would be best trained to determine the desired abilities of committee members from the standpoint of being able to work with the individuals. Ms. Wallace stated the need for credibility and objectivity. Ms. Wallace and Ms. Averill stated the need for the Board to be removed from the selection process.

Dr. West suggested compiling a list of six doctors to use and to give the list to Ms. Wallace. Mr. Hales suggested each Board member suggest doctors from their respective areas of Idaho.

New Business

Implementation of Part IV National Boards

NBCE - Discussion was held regarding implementation of the Legislature's recent passage of acceptance of Part IV of the national boards administered by the National Board of Chiropractic Examiners (NBCE). The NBCE provides official score reports which for Part IV should reflect a 75% score (approximately 375 points). The examinee's fee for Part IV is \$850. The Board must notify the NBCE in writing of its acceptance of Part IV and of its agreement to cooperate with the NBCE. It was also noted that Part IV is given in May and November.

STATE - Regarding changes effected by acceptance of Part IV at the state level, Board fees will remain the same. NBCE has advised that states usually retain exam fee amount as part of application/original license fee.

Jurisprudence - In lieu of a jurisprudence examination, the Board agreed to have Mr. Hetrick add an affidavit to the new Application for Licensure form, which would state that the applicant has received, read and agrees to comply with the laws and rules governing chiropractic licensure in the state of Idaho.

Automatic Licensure and/or Retake - Applicants who failed the January 1999 state Board examinations, but have taken, passed and provided official proof of having passed Part IV, will automatically become licensed on July 1, 1999. Those applicants who have not taken and passed Part IV, but took and did not pass all sections of the January 1999 state Board examinations, will be offered a retake of the applicable section(s) prior to July 1, 1999.

Notice/Scheduling of Retakes - The Board requested that Ms. Swan-Brown identify any active application files and advise the Board of those needing to retake sections of the state Board examination. Mr. Hales will draft a letter providing notice to those individuals that, as of July 1, 1999, Part IV of the national boards is a requirement for licensure in Idaho. The letter will offer those examinees the opportunity to retake the appropriate section(s), and request that they notify the Board immediately of their intent, and pay fees to retake the examination. Dr. Hollingsworth suggested late May or early June 1999 as a tentative examination retake date. Dr. Hollingsworth

moved that the Board provide notice to those eligible applicant-examinees who have active applications, that they may retake necessary sections failed on a date to be determined, in late May, 1999. Dr. West amended to offer the retake in the middle of June, a Tuesday or Thursday in the middle of June” and Ms. Averill seconded as amended, and all carried.

A review of Board records noted the files of 5 eligible candidates.

Special Purposes Examination Chiropractic (SPEC)

It was reported that the SPEC exam is given in September and March of each year. Applicants must make a written request to NBCE to take the SPEC for Idaho. NBCE then contacts the applicant and proceeds with arrangements. Idaho must receive an official score report sent directly by the NBCE.

On the topic of reciprocity as related to the new legislation, the Board will still require applicant be in practice for five years, submit their request to NBCE to take the SPEC, and provide the Board official transcripts of the SPEC. Dr. Moldenhauer discussed that the SPEC can be accepted by the Board in lieu of Parts III and IV, depending on when they took examinations.

Mr. Hales stated requirements as: 1) must have national boards Parts I, II, III and Physiotherapy; 2) if licensed prior to 1980, graduation from a CCE approved college is not necessary; if after 1980 must have graduated from a CCE approved college; 3) five years consecutive experience prior to application; 4) a valid, unrevoked, unsuspended license to practice in another state; 5) the office transcripts of the SPEC; and, 6) must sign affidavits on the current Application for Licensure.

Old Business

Peer Review – Committee Selection Process

Dr. Moldenhauer listed the following as potential Peer Review Committee members: Dr. Herbert W. Oliver, Dr. James E. Vancho, Dr. Erik Thompson, Dr. Kurt A. Bailey, Dr. Tod J. Spainhower, and Dr. Shannon D. Gaertner. He stated he had contacted these individuals who had responded to the previous survey and all indicated they were still interested in participating. Dr. Moldenhauer suggested that since time had passed, sending another notice requesting submissions of letters of interest may be appropriate. Dr. Hollingsworth asked whether there was a summary of requirements for peer review committees and suggested requesting during the IACP conference that anyone interested notify the Board.

Dr. Hollingsworth moved to enter executive session for discussion of peer review. Dr. West seconded and all carried.

Dr. Hollingsworth moved to resume from executive session, Ms. Averill seconded and all carried.

Dr. Hollingsworth moved that when Drs. Moldenhauer and Boughton leave the Board, that they be appointed as Co-Chair for the Peer Review Committee until further notice. Dr. West seconded and all carried.

Peer Review – Training

Dr. Moldenhauer stated Dr. Carr has agreed to submit his bill for his travel related to training prior to July 1, 1999. A date in September or October will be scheduled for providing the one day training program. Dr. Hollingsworth advised Dr. Moldenhauer to ask if Dr. Carr could provide the training on September 11th and 18th in consideration of physician office schedules.

Further discussion was held regarding having each Committee member provide secretarial support from their own office to handle Peer Review business. It was suggested this could rotate on a monthly basis until such time as the budget allows for hiring for those services.

Tax Audits/Uncharged Sales Tax

Mr. Hales discussed that the topic of tax audits regarding uncharged sales tax. He noted the issue may actually be a professional issue, rather than being within purview of the Board. Discussion was held that the Board should address the issue from the standpoint of how it effects the scope of chiropractic practice and the public. Dr. West discussed a recent Supreme Court decision on discrimination stating it is illegal to provide “caps” to one provider without applying

those same “caps” to all others. Dr. West interpreted the ruling as meaning Idaho does not have the right to discriminate, which the tax audits do as related to M.D.s. He further discussed the pharmacy act as related to M.D.s supplying prescription drugs on a tax exempt basis. Mr. Hales discussed the letters addressed to the Board requesting that it issue a legal opinion on a chiropractor’s right by law to prescribe clinical nutritional supplements as part of the chiropractor’s scope of practice. Mr. Hales advised he can render an opinion, but the issue of taxes will likely be a battle with the Tax Commission and the chiropractic profession. Mr. Hales suggested that the Board consider requesting an Attorney General Opinion.

Dr. Hollingsworth moved that Roger Hales review letters received on the issue of the tax audits/uncharged sales tax and render an opinion regarding uncharged sales tax and the definition of a “durable medical good” with regard to Idaho Code Title 54, seconded by Dr. West, and all carried.

Continuing Education

Upledger Institute - Donetta Foss addressed the Board seeking approval or denial of certain matters submitted for continuing education. Regarding the first matter submitted by Upledger Institute, Dr. Moldenhauer advised that although the Institute conducts reputable seminars, the Institute does not meet the criteria for accreditation.

Dr. Koren - Dr. Hollingsworth further elaborated that Dr. Koren’s presentation did not clearly separate the business aspect from the educational content. Dr. Hollingsworth stated this program clearly illustrated the need for the Board to promulgate rules and regulations governing continuing education. Dr. Boughton asked Mr. Hales whether any action could be taken regarding presentations that do not follow the syllabus submitted to the Board. Mr. Hales advised that the Board’s current continuing education rules give only two requirements: 1) subject material shall be germane to the practice of chiropractic; and 2) shall be sponsored by an approved school of chiropractic. He stated the Board has discretion in determining whether subject matter is germane to chiropractic practice. Dr. Hollingsworth reiterated that the Board voted approval of the course for 12 hours continuing education credits. Dr. West stated he does not see how the Board can now turn around and disallow the continuing education credits.

Dr. Hollingsworth moved that the Chair write a letter to Life College advising that Dr. Koren did not follow his syllabus, spent more than five hours discussing his dislike of vaccinations, impuned the character of an Idaho doctor, introduced a multi-level business, and giving notice that Dr. Koren will not be approved for subsequent continuing education credit. Dr. West seconded, and amended the motion to have legal counsel review the letter prior to mailing. Ms. Averill seconded and it carried.

Dr. Moldenhauer addressed the Board’s policy of requiring submission of continuing education courses for approval at least three months prior to actual presentation. Mr. Hales noted that the three months stipulation appeared to be a policy, and clarified that a policy is not a rule. Mr. Hetrick addressed the revised Renewal Notice and continuing education requirements as cited from Board rules, as well as the affidavit stating licensee has met the continuing education credits and the 10% audit policy. Mr. Hales stated that Board policy should be based on current rules, and noted the Board may need to promulgate additional rules.

Ms. Averill moved that continuing education rule changes be on the agenda for the Board’s next meeting and continue to be until such time as the Board has formulated clear-cut continuing education rules are worked out. Dr. Boughton seconded and all carried.

Dr. West moved that the Board recess for lunch, Ms. Averill seconded and all carried. The Board reconvened from lunch break at 1:50 p.m., and Dr. Moldenhauer called the meeting to order.

Old Business

Continuing Education— **cont.**

Ms. Foss advised the Board she had reviewed the continuing education status of chiropractors currently licensed in Idaho and provided the following statistics:

341 licensed chiropractors of which only 89 have a continuing education record, of which 47 do not have the required number of hours for the year. Ms. Westberg advised there may be some discrepancy in that information due to the records having been kept mostly manually until

January 1999. Dr. Boughton stated that the recent convention and the upcoming convention will likely help many meet their required continuing education credits for the year. Ms. Foss stated she had been trying to educate licensees to not wait until renewal time to submit their continuing education credits. Ms. Westberg suggested Board members also address this issue at the upcoming IACP convention. She elaborated that when the credits are turned in at the last minute, the high influx of work can cause delay in recording, and the risk of licensees not meeting the requirements for renewal. Ms. Foss further advised that the new system will not allow licenses to print until those credits are entered into the system. Dr. Boughton advised the efficiency of the new system will allow the Bureau to catch more who have not met the requirements, but at the same time cause more work for staff, due to credit documentation and record entry upon receipt.

There being no further business to come before the Board at this time, Dr. Boughton moved to adjourn. Motion seconded by Ms. Averill and carried.

Board approved 8-18-99